

RESOLUTION NO. _____, SERIES 2017

**A RESOLUTION OF THE LOUISVILLE METRO COUNCIL AMENDING
THE METRO COUNCIL POLICIES AND PROCEDURES TO ADD AN
ANTI-HARASSMENT POLICY. (AMENDED BY SUBSTITUTION)**

**SPONSORED BY: COUNCIL MEMBERS LEET, GREEN, DENTON, JAMES,
MULVIHILL, KRAMER, AND ENGEL**

WHEREAS, Metro Council is committed to providing a safe work environment for its employees and members that is free of harassment.

WHEREAS, Metro Council is desirous of establishing an anti-harassment policy to protect its employees and members from verbal or physical abuse, harassment, intimidation, threats, violence or other adverse behavior.

**BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS
FOLLOWS:**

SECTION I: The Louisville Metro Council Policies and Procedures are hereby amended to add the following Anti-Harassment Policy:

Section 30. ANTI-HARASSMENT POLICY

A. Definitions

Alleged Harasser: The individual against whom a complaint of harassment is filed.

Complainant: The individual who files a harassment complaint.

Metro Council Employee: ~~Metro Council Members~~, Legislative assistants, caucus staff, the Metro Council Clerk and the employees who report to the Metro Council Clerk, assistant to the Council President, business office staff (also called administrative staff), the Council Financial Analyst, staff helpers, administrative assistants and administrative clerks, interns, volunteers, and any other paid or unpaid Metro Council staff.

Metro Council Member: Member of consolidated local government under KRS § 67C.103

Protected Employment Categories: Race, color, religion, national origin, ancestry, sex, age 40 and older, disability, smoking status (as long as workplace policy is complied

with), pregnancy, veteran status, military status, sexual orientation, gender identity or any other protected characteristic as established by law.

Third Party Investigator. An individual with the ability and experience to conduct investigations pursuant to this policy. This individual will be an independent contractor who is not an employee of Louisville Metro Government.

B. Sexual Harassment and Other Harassment

The Council will make every reasonable effort to ensure that no Metro Council Employee or Metro Council Member is subjected to harassment. In order to preserve and protect an environment in which all Metro Council Employees, Metro Council Members, and all members of the public are treated with equal courtesy and respect, the Council will not tolerate verbal or physical abuse, harassment, intimidation, threats, violence or other adverse behavior towards any individual on the basis of race, color, religion, national origin, ancestry, sex, age 40 and older, disability, smoking status (as long as workplace policy is complied with), pregnancy, veteran status, military status, sexual orientation, gender identity or any other protected characteristic as established by law.

The Council will not tolerate any behavior intended to intimidate, humiliate, threaten, denigrate or otherwise interfere with the ability of any Metro Council Employee, Metro Council Member, or any member of the public to perform job functions or conduct business, whether or not such behavior constitutes a violation of individual civil rights within the meaning of federal or Kentucky statutes, Louisville Metro Code of Ordinances or any other violation of this policy.

The Council commits to make every reasonable effort to ensure that no Metro Council Employee or Metro Council Member is subjected to harassment or a hostile working environment¹ by another Metro Council Employee or Metro Council Member and further seeks to prevent any harassment of members of the public by Metro Council Employees or or Metro Council Members.

Sexual harassment consists of any unwelcome sexual advance, request for sexual favors, and other verbal and physical conduct or communication of a sexual nature if:

- (1) submission to such advances, requests or conduct and communication is an explicit or implicit term or condition of obtaining or retaining employment;
- (2) submission to or rejection of such advances, requests or conduct and communication by an employee affects decisions concerning an individual's employment; or

¹ The term "hostile work environment" is used as it is understood in Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act of 1967, American With Disabilities Act, Equal Pay Act, KRS Chapter 344, and LMCO Chapter 92.

(3) such conduct or communication has the purpose or effect of unreasonably interfering with the employee's ability to perform his/her job functions or to create a hostile, intimidating or offensive work environment.

Other sexually harassing or offensive conduct in the workplace, whether committed by Metro Council Members, Metro Council Employees, or non-employees, is also prohibited. This conduct includes but is not limited to –

- Unwanted physical contact or conduct of any kind, including sexual flirtations, touching, advances, exposures, or propositions.
- Verbal harassment of a sexual nature, such as lewd comments, sexual jokes or references, and offensive personal references.
- Demeaning, insulting, intimidating, or sexually suggestive comments, behavior or exposure directed at about an individual or in the presence of any individual in public or in private.
- The display in the workplace of demeaning, insulting, intimidating, or sexually suggestive objects, pictures or photographs.
- Demeaning, insulting, intimidating, or sexually suggestive written, recorded, or electronically transmitted messages (such as email, text messaging, and Internet materials).

Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It does not refer to consensual personal and social relationships without a discriminatory employment effect.

Not every incident of inappropriate conduct constitutes harassment in violation of this policy. Isolated incidents of offensive conduct are not necessarily unlawful harassment. For example, random words that offend a particular person may not be sufficient to constitute harassment under this policy. Or, on occasion, employees may use rough or profane language in the workplace. While this may not be harassment, any Metro Council Employee or Metro Council Member who finds it offensive should report it under the procedure outlined below.

Inappropriate, offensive, or discourteous conduct, even if it does not constitute harassment in violation of this policy, may result in an investigation. If a Metro Council Employee or Metro Council Member is offended by such behavior, it is important that he/she follows the procedures set out below so the offensive behavior can be investigated, evaluated, and brought to the attention of the Committee on Committees.

Any of the above conduct, or other offensive conduct, directed at any Metro Council Employee or Metro Council Member because of his or her status under the Protected Employment Categories is also prohibited.

C. The Reporting Process

A Metro Council Employee or Metro Council Member should report any violation of this policy as soon as it occurs by using this reporting process.² The very nature of harassment makes it difficult to detect unless the person being harmed registers his/her discontent. Any Metro Council Employee or Metro Council Member who believes that he/she has been harassed should report the alleged harassment as follows –

- To the Third Party Investigator, the name and contact information for the Third Party Investigator will be provided to all Metro Council Employees and Metro Council Members by the Office of the Metro Council President.
- The Metro Council Employee and Metro Council Member may also report the alleged harassment through the Louisville Metro Tip Line by calling 888-226-2264. Although this tip line allows for complaints to be made anonymously, the employee Complainant is strongly encouraged to provide his or her name and to note the complaint arises from the Metro Council. If that information is not provided, then it will be very difficult for the Metro Council to take the appropriate Interim Actions (see below) and it will also delay substantially the Third Party Investigator's work in pursuing the investigation.

Within forty-eight (48) hours of receiving the report, the Tip Line shall forward the report to both the Third Party Investigator and the Complainant's supervisor. If the supervisor is the Alleged Harasser, then the Tip Line shall forward the report to the Third Party Investigator and the Committee on Committees.

- ~~If the A Metro Council Employee has a supervisor, then employee~~ should notify his/her immediate supervisor of the alleged harassment. This notification to the supervisor allows the supervisor to consider appropriate Interim Actions (see below). Of course, if the Metro Council Employee is being harassed by his or her supervisor, then that employee should make the report of alleged harassment at one of the other two reporting options noted immediately above.
- A Metro Council Member should notify the Committee on Committees of the alleged harassment if the Committee on Committees has authority to consider appropriate Interim Actions as provided below.

Supervisor Reporting Requirement. Any Metro Council supervisor who receives a complaint of alleged harassment must report the complaint to the Third Party Investigator for review and investigation. The complaint should be reported to the Third

² Nothing in this policy precludes any Metro Council Employee or Metro Council Member from pursuing a private cause of action or filing a complaint with the Equal Employment Opportunity Commission (EEOC) or the Kentucky Human Rights Commission. Metro Council Employees and Metro Council Members may also file a complaint with the Ethics Commission against any Metro Council Member, Legislative Assistant, or Caucus Staff for behavior prohibited in LMCO Chapter 21. Any allegations of criminal conduct should be reported promptly to the appropriate law enforcement agency.

Party Investigator within two (2) business days of the Metro Council supervisor receiving the complaint.

Interim Actions. In some situations, it is advisable to take Interim Actions soon after the complaint has been made or during the course of the investigation process. Often, the Interim Action is to separate the Complainant and the Alleged Harasser. These options include but are not limited to –

- Have the two individuals perform their work in different parts of the City Hall building;
- Have one of the employees (typically the Alleged Harasser) work from home;
- Have one of the employees (typically the Alleged Harasser) work from a different Metro Louisville building; or
- Suspend the Alleged Harasser with or without pay, if permitted.

It is the responsibility of the direct supervisor of the Complainant to determine appropriate Interim Actions. If the direct supervisor is the Alleged Harasser, then the Committee on Committees will determine the appropriate Interim Actions. If the Complainant or the Alleged Harasser is a Metro Council Member, then the Committee on Committees will be involved in determining the appropriate Interim Actions.

D. The Investigation Process

1. Complaint

The Third Party Investigator begins review of the complaint after the complaint is submitted directly by the Complainant, or the complaint is submitted by the Louisville Metro Tip Line or the complaint is submitted by the supervisor of the Complainant.

2. Initial Review

The Third Party Investigator has authority to determine whether a complaint on its face is sufficient or vexatious (as in the case of someone who has a history of abusing the Tip Line or who has filed multiple complaints and is known to have abused process in the past). The Third Party Investigator will make its determination on whether a complaint is sufficient or vexatious within five (5) business days of receiving the complaint. The Third Party Investigator may extend this 5-day period with the written approval of the ~~Metro Council President~~ Committee on Committees. If the Third Party Investigator determines the complaint is insufficient or vexatious, a letter shall be communicated to the Complainant and the Alleged Harasser with an explanation of the deficiencies in the complaint. A copy of said letter will be filed with the Metro Council Clerk's office. The Metro Council Clerk is to maintain a file containing communications from the Third Party Investigator. Records relating to harassment complaints are to

remain confidential to the extent allowed by law. See the Confidentiality notification immediately below.

3. Confidentiality

The Council recognizes that confidentiality is important and will protect the confidentiality and privacy of the Complainant, the Alleged Harasser, and witnesses to the extent possible. However, the Council cannot guarantee complete confidentiality because an effective investigation cannot be conducted by the Third Party Investigator without revealing certain information to the Alleged Harasser and potential witnesses. As a result, information about the allegation of harassment will be shared only with those necessary for the Third Party Investigator to carry out its investigative and operational responsibilities. Records relating to harassment complaints will be maintained in the same manner. The Council cannot maintain confidentiality in circumstances in which it is required by law to disclose information (such as in response to legal processes, Open Records, etc.) and when disclosure is required by the Council's outweighing interest to protect others.

4. Sworn Complaint and Notice

If the Third Party Investigator determines the complaint is not vexatious and is sufficient, then the Third Party Investigator will commence its investigation. In order for the investigation to commence, the Complainant must provide the Third Party Investigator with a sworn complaint. The Third Party Investigator will contact the Complainant to secure the sworn complaint. After the sworn complaint has been provided, the Third Party Investigator shall give notice of the commencement of the investigation to the Complainant, the Alleged Harasser, and the Committee on Committees. If the allegations of harassment are made against any Metro Council Member on the Committee on Committees, the Metro Council President shall appoint a replacement Metro Council Member on that committee.

5. Authority

The Third Party Investigator shall exercise the authority to interview the Complainant, the Alleged Harasser, and any witnesses to the incident or incidents in question as well as collect documentation or any available information with respect to the incident or incidents in question. Metro Council Employees and Metro Council Members have a duty to cooperate with the investigation and to be truthful. The Third Party Investigator will report incidents of noncooperation to the Committee on Committees.

6. Report

The Third Party Investigator should complete the investigation within thirty (30) days after the sworn complaint is submitted. The Third Party Investigator may extend this 30-day period with the written approval of the Committee on Committees. At the

conclusion of the investigation, the Third Party Investigator shall prepare and present a written report of the results of the investigation to the Committee on Committees with a copy to the Complainant and the Alleged Harasser.

7. Status Report

The Third Party Investigator will provide a monthly status report to the Metro Council Committee on Committees, if the Third Party Investigator has any pending investigations.

E. The Review of Investigation Results and Action

The Committee on Committees shall review the investigation results concerning allegations against a Metro Council Employee or Metro Council Member and take all reasonable measures to protect any Metro Council Employee and Metro Council Member against harassment. Whenever possible, the Committee on Committees will meet in closed session.

The Complainant and/or the Alleged Harasser may submit a written response to the Third Party Investigator's written report. Any such response shall be presented to the Committee on Committees within seven (7) days after receipt of the Third Party Investigator's written report. The Committee on Committees may allow an opportunity for the Complainant and/or the Alleged Harasser to appear before the Committee on Committees before it takes action. The Committee on Committees should complete its consideration of the written report and take appropriate action, if any, within twenty-one (21) days of the committee receiving the written report from the Third Party Investigator.

1. Action against a Metro Council Member

If the Committee on Committees determines there is sufficient cause to believe a Metro Council Member has subjected a Metro Council Employee to harassment, the Committee on Committees may take remedial actions consistent with the severity of the misconduct. These options include but are not limited to –

- Publish the report findings;
- Encourage the alleged harassing Metro Council Member to follow actions consistent with the investigation and recommendations made by the Committee on Committees;
- Strongly admonish the actions of the Metro Council Member;
- Initiate removal proceedings against a Metro Council Member as set forth in KRS § 67C.143³;

³ Under KRS 67C.143, the initiation of removal proceedings is not limited to the Committee on Committees.

- File a complaint with the Ethics Commission pursuant to the complaint requirements contained in LMCO § 21.06;
- Initiate a Metro Council resolution condemning the conduct of the Metro Council Member;
- Restrict the Council Member's access to City Hall and/or particular areas within City Hall; and/or
- Modify the Council Member's committee assignments.

If the investigation results suggest criminal conduct, the allegations shall be reported promptly by the Committee on Committees to the appropriate law enforcement agency.

2. Action against a Metro Council Employee ~~Who is not a Metro Council Member~~

If the Committee on Committees determines there is sufficient cause to believe a Metro Council Employee has subjected ~~another~~ a Metro Council Employee or Metro Council Member to harassment, the Committee on Committees may take remedial actions consistent with the severity of the misconduct and the authority granted to the Committee on Committees.

The Committee on Committees will provide the report to the immediate supervisor of the Metro Council Employee with recommended corrective actions and/or suggested discipline.

If the Committee on Committees supervises the alleged harassing Metro Council Employee, the Committee on Committees will take appropriate corrective actions and/or discipline.

Discipline Options. Discipline will be based upon the severity of the misconduct engaged in by the employee. These options include but are not limited to –

- **Written Reprimand.** The supervisor should place in writing the problem conduct engaged in by the employee and outline the steps to resolve the problem and prevent its recurrence in the future. The written reprimand is placed in the employee's personnel file. The employee may, within five (5) days, file a written response to the reprimand. Any such response will also be placed in the employee's personnel file.
- **Suspension.** For more serious misconduct, the employee may be suspended without pay. Suspensions without pay should be for a designated number of days up to thirty (30) days. A suspension without pay will be documented in the

employee's personnel file. The employee may, within five (5) days, file a written response to the suspension without pay. Any such response will also be placed in the employee's personnel file.

- **Demotion.** Also for serious misconduct, an employee may be demoted. A demotion will be documented in the employee's personnel file. The employee may, within five (5) days, file a written response to the demotion. Any such response will also be placed in the employee's personnel file.
- **Employment Termination.** For the most serious misconduct, the employee's employment may be terminated. An employment termination will be documented in the employee's personnel file. The employee may, within five (5) days, file a written response to the employment termination. Any such response will also be placed in the employee's personnel file.

The discipline options noted above are not exclusive and need not be followed in a progressive fashion. Discipline can be imposed as the supervisor deems fit. Nothing in this Discipline Options section or otherwise in these policies shall be interpreted to be in conflict with or to eliminate or modify in any way the employment-at-will status of Metro Council Employees.

If the investigation results suggest criminal conduct, the allegations shall be reported promptly by the Committee on Committees to the appropriate law enforcement agency.

F. Retaliation

The Council will not tolerate adverse treatment of any individual because he or she has filed a harassment complaint or has provided information concerning such complaint. Any Metro Council Employee or Metro Council Member who engages in retaliation against another Metro Council Employee or Metro Council Member who has filed a complaint or provided information concerning such complaint shall be subject to disciplinary action. Any Metro Council Employee or Metro Council Member who feels he or she has been subjected to such retaliation should report this action to his or her immediate supervisor and/or the Metro Council President and/or to the Third Party Investigator.

G. False Claims

No person shall file a complaint which is false, made in bad faith, with actual malice, or without probable cause. In the event that such a complaint is filed under this policy, the complaint and any report by the Third Party Investigator shall be forwarded to the Committee on Committees for review and action, if appropriate.

The Complainant and/or the Alleged Harasser may submit a written response to the Third Party Investigator's written report that finds a false complaint was filed. Any such response shall be presented to the Committee on Committees within seven (7)

days after receipt of the Third Party Investigator's written report. Upon request, the Committee on Committees may allow an opportunity for the Complainant, the Alleged Harasser, and others to appear before the Committee on Committees before it takes action.

H. Training

Metro Council Members and Metro Council Employees are required to attend sexual harassment training, as offered through Louisville Metro Government, every two (2) years or as otherwise deemed necessary by the Committee on Committees.

SECTION II: This Resolution shall take effect upon its passage and approval.

H. Stephen Ott
Metro Council Clerk

David Yates
President of the Council

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

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